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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

DAVID E. MILLER,
Petitioner,

vs.

COMMISSIONER OF REVENUE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

PETITIONER'S REPLY BRIEF

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REASONS FOR GRANTING THE PETITION

Minnesota relies on a string of authority commencing with *Henneford v. Silas Mason Co.,* 300 U.S. 577 (1937) and suggests that we have ignored the principle of those cases. (BR. p. 4)

Minnesota has missed the thrust of our petition for the time for quarreling with the doctrine of *Henneford, supra,* and its progeny, such as *National Geographic Society v. California Board of Equalization,* 430 U.S. 551 (1977) has long since passed; but we do not dispute Minnesota's right to impose a use tax upon Miller in this case. Rather we are addressing the modern question, never before presented to this Court and an issue of

potentially immense importance concerning the *measure* of the use tax where goods have indeed not "come to rest" as they had in *Henneford, National Geographic Society,* and similar cases. In today's society goods continually move across state borders and our petition is based upon this undeniable fact that goods do not always "come to rest". Here Miller's farm machinery constantly crossed the border between North Dakota and Minnesota and was eventually stored in Miller's farm yard in North Dakota. It is noteworthy that Minnesota concedes that the decision below would result a $60,000 use tax on jet aircraft owned by IBM that lands in Minnesota on a single occasion, so long as it was intended for use in that state.

Moreover if the effect of Minnesota's use tax was merely to equalize the burden between local and those who purchase out-of-state we concede we would have no issue to present to this Court. But Miller must, under the decision below, pay Minnesota's use tax on the use of that machinery in North Dakota, just as the Washington Redskins would pay the full use tax on its football paraphernalia, even though it may play in Minneapolis once every five years.

The constitutional requirement for the apportionment of a use tax have never before been presented to this Court, nor any other court but the one below. The effect of a use tax in the case of moving goods is indistinguishable from the personal property taxes levied in *Norfolk and Western Ry. Co. v. Missouri State Tax Commission,* 390 U.S. 317 (1968) where this Court found the apportionment method invalid. Here there is no apportionment method whatsoever and it is this mischief that burdens interstate commerce, presenting problems of significant constitutional importance.

CONCLUSION

For the foregoing reasons the Petition should be granted.

Respectfully submitted,

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